HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.6303 OF 2007

Between:

Gopal Jaju . . .Petitioner

AND

State of Andhra Pradesh,
through its Secretary,
Customs & Central Excise Department,
Hyderabad and others. . . .Respondents

:: O R D E R ::

Counsel for the petitioner : Sri Bankatlal Mandhani

29th March, 2007

Per G.S.SINGHVI, C.J.

In this petition, the petitioner has prayed for issue of a mandamus to respondent Nos.2 to 4 to take steps for execution of valid title deeds in his favour in respect of the land bearing Survey No.178

situated at Gagan Pahad Village, Rajendranagar Mandal, Ranga Reddy District, only after getting the property deleted from Notification No.403, dated 6-10-2001 issued by Revenue (Registration-I) Department.

The land in question belongs to respondent No.5 – M/s. Moghul Textiles Limited. The same was put to auction for realisation of the dues of the Customs and Central Excise Department. For this purpose, Assistant Commissioner of Customs and Central Excise, Arrears Recovery Cell, Hyderabad-IV (respondent No.3) issued auction notice (Ex.P1). This was followed by an advertisement (Ex.P2) issued by respondent No.4, who was appointed as auctioneer. The petitioner deposited Rs.25,000/-, as entry fee and participated in the auction held on 27-2-2007. He gave highest bid of Rs.1,05,00,000/-. On that very day, he deposited Rs.26,00,000/- as earnest money In terms of clause 2 of the notice (Ex.P1) and paragraph 5 of the advertisement (Ex.P2). In terms of clause 3 of the conditions of auction notified by respondent No.3, the petitioner was required to pay the balance amount within 15 days, but with a view to avoid this, he submitted representation dated 20-3-2007 to respondent No.3 with a request that he may be allowed to inspect the documents relating to the land. The latter allowed him to verify the documents. Thereafter, the petitioner submitted representation dated 21-3-2007 to respondent No.3 and pointed out that as per Notification dated 6-10-2001, the land in question was recorded as 'Shikam Sarkari' and prayed that necessary corrections may be got made before undertaking the registration process.

The grievance of the petitioner is that despite repeated representations, respondent Nos.2 and 3 have neither given clarification regarding the status of the land nor they have taken steps to get the entries corrected and he is being forced to pay the balance price.

Sri Bankatlal Mandhani, learned counsel for the petitioner

argued that his client cannot be compelled to pay the balance price because the status of the land got auctioned by respondent Nos.2 and 3 through respondent No.4 is not clear. He referred to Notification dated 6-10-2001 to show that the land in question is recorded as 'Shikam Sarkari' and argued that the same could not have been auctioned by respondent Nos.2 and 3 for realisation of the dues of the Customs and Central Excise Department and, in any case, the petitioner cannot be compelled to pay the balance price till necessary corrections are made in the records. Sri Mandhani emphasized that till 27-2-2007, the petitioner was not made aware of the fact that the land in question has been declared as 'Shikam Sarkari', else he would not have participated in the auction.

In our opinion, there is no merit in the arguments/submissions of the learned counsel. A bare reading of the auction notice (Ex.P1) issued by respondent No.3 and the advertisement (Ex.P2) issued by respondent No.4 shows that the prospective bidders were given opportunity of inspection on 26-2-2007 from 11.00 a.m. to 4.00 p.m. They were also informed about the conditions of auction. This is evinced from the extracts of the notice issued by respondent No.3 and paragraph 2A and the entry relating to the list of items to be auctioned incorporated in the advertisement issued by respondent No.4. The same read as under:

"Notice

COMMISSIONER OF CUSTOMS & CENTRAL EXCISE
Hyderabad-IV Commssionerate, Postnett Bhavan, Tilak Road,
Ramkote, Hyderabad-500 001.

AUCTION ON: 27-02-2007: AT 11 A.M : OF LAND/BUILDING, VAN, MACHINERIES

AUCTION AT: The O/o. The Chief Commissioner of Customs and Central Excise, 6th Floor, Training Hall, Basheerbagh, Hyderabad.

INSPECTION ON : 26-2-2007 : FROM 11 A.M. TO 4 P.M.

AUCTION NOTICE – FOR RECOVERY OF GOVT. DUES OF DEFAULTERS

It is hereby notified for the general public that the following movable/immovable properties attached to the Government of India under Section 142(1)(c)(ii) of Customs Act, 1962, as made applicable to Central Excise matters are proposed to be auctioned for realisation of Government dues in terms of Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995. These goods will be sold by public auction on the date mentioned above by auctioneers M/s. Varma & Co. (Customs and Central Excise Auctioneers). The bidders may inspect the lots mentioned for auction on the dates mentioned as above.

Sl.No.	Property to be auctioned and place of inspection
1.	One acre land with shed belongs to M/s. Moghul Textiles Ltd., in Sy.No.178, Gaganpahad Village, R.R.Dist.

THE PROSPECTIVE BIDDERS MAY TAKE NOTE THAT:

1. ENTRY FEE SHOULD BE PAID FROM 9 TO 11 A.M. ON 27-2-2007 AT AUCTION VENUE:- An amount of Rs.25,000/- should be deposited prior to the auction as Entry Fee which shall be refunded to the unsuccessful bidders after the entire auction is over. The Entry Fee shall be paid only by PO/DD only drawn in favour of the Commissioner of Customs & Central Excise, Hyderabad-IV Commissionerate, Hyderabad. The Entry Fee paid by the successful bidder will be adjusted against the EMD.

2. EMD ON THE SPOT:- If the bid/officer is accepted in favour of the highest bidder, then the highest bidder shall deposit immediately on the fall of the hammer either full bid amount or a minimum of 25% of the bid amount as EMD only by P.O./DD drawn in favour of the Commissioner of Customs and Central Excise, Hyderabad-IV Commissionerate, Hyderabad. If the bidder fails to pay the EMD, his bid shall be cancelled forthwith and lot/lots re-auctioned. The bidder will forfeit the ENTRY FEE and he will be blacklisted. (For immovable properties EMD strictly by Pay Order/DD only).

3. PERIOD FOR BALANCE PAYMENT AND DELIVERY OF LOT:- The auctioneer shall collect the balance amount of the bid along with the taxes, charges etc., payable from the bidder within 3 working days, from the date of acceptance of the bid (for immovable properties within 15 calendar days), or as per the conditions of auction or within such or extended time, as the case may be, by PO/draft as may be specified by the Commissioner from the successful bidder. If the bidder fails to pay the balance of the bid amount within the aforesaid period, the bid shall be cancelled forthwith and the EMD paid by the successful bidder shall be forfeited to the Government."

Auction Notice

2A	Verification of land documents & legal, registration and all other statutory expenses should be paid extra by the purchaser	For land, ground, premises, buildings, factories, it is assumed that the purchasers have inspected, verified and have satisfied themselves before bidding the various property documents such as, PARENT DOCUMENTS, PATTA COPY, ENCUMBRANCE CERTIFICATES, FIELD MAP, SKETCH, LAYOUT MAP (if any) etc., and verified concerned authority, electricity and metro water dues, property tax papers and all the legal documents for purchase of property. Property will be sold on "As is where is" basis. All other statutory dues and legal and registration charges should be paid by the purchasers extra other than sales amount.

LIST OF ITEMS TO BE AUCTIONED ON 27-2-2007 AT HYD-IV COMMISSIONERATE

The description is approximate only. The purchaser should inspect himself and ascertain the correctness of the description."

It is, thus, evident that those who intended to participate in the auction were given opportunity to inspect the property and the relevant documents. The petitioner has neither pleaded that he is an illiterate person nor Sri Mandhani has argued that his client participated in the auction without reading the conditions incorporated in the auction notice and the advertisement. It is, therefore, reasonable to presume that before participating in the auction held on 27-2-2007 and giving the bid of Rs.1,05,00,000/-, the petitioner had inspected the property as well as the documents and satisfied himself about its character and the letters written by him to respondent No.3 with the avowed object of ascertaining the true character of the land were clearly an after-thought. That apart, notification dated 6-10-2001 (Ex.P6), to which reference has been made by the petitioner, cannot be treated as conclusive regarding the nature of the property because the land in question was being used for running a factory. It is not possible to comprehend that respondent No.5 had established a factory over the land belonging to the State Government and the latter did not take any

steps to recover the land.

For the reasons stated above, we hold that the dispute sought to be raised by the petitioner regarding the nature of the land and its status is illusory and is nothing but an attempt to wriggle out of his obligation to pay the balance price in terms of the conditions of auction, and jurisdiction of this Court under Article 226 of the Constitution cannot be allowed to be misused for this purpose.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP.No.8053 of 2007 filed by the petitioner for interim relief is also dismissed.

G.S.SINGHVI, C.J.

29th March, 2007.

C.V.NAGARJUNA REDDY, J

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